

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JAMIE DOUGLAS	:	
	:	
v.	:	NO. 02-4556
	:	
SCHWEISS DISTRIBUTING, INC.	:	
and	:	
SCHWEISS BI-FOLD DOORS, INC.	:	
and	:	
CALDER DOOR & SPECIALITY COMPANY	:	

**REPLY OF DEFENDANTS, SCHWEISS DISTRIBUTING, INC. AND
SCHWEISS BI-FOLD DOORS, INC. TO THE OPPOSITION
OF DEFENDANT, CALDER DOOR AND SPECIALTY COMPANY
TO DEFENDANTS, SCHWEISS' MOTION FOR SUMMARY JUDGMENT**

Defendant, Calder contends that the guards provided by Schweiss would not prevent access to the nip points. However, there is no evidence of record to support this mere conclusion.

Further, Calder contends that removal of the guard was foreseeable as evidenced by the fact that Schweiss manufactured replacement guards. However, the issue is was it foreseeable that a user would remove the guard despite warnings not to remove and then further, not replace the guards before continued operation. Pursuant to Davis v. Berwind Corporation, 547 Pa. 260, 690 A.2d 186 (1957), it is not a foreseeable event and indeed such acts represent a subsequent change for which the manufacturer is absolved of liability.

Calder further alleges that the lack of a photo eye and bottom safety door edge rendered the door defective. By Plaintiff's own admission, this accident would

not have occurred if the guards had not been removed. Therefore, the lack of these devices does not render Schweiss liable. Putt v. Yates-American Machine Company, 722 A.2d 217 (Pa. Super. 1998); Thompson v. Motch and Meriweather Machinery Company, 358 Pa. Super. 149, 516 A.2d 1226 (1986).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Anne M. Manero, Esquire, hereby certify that on this date, a true and correct copy of Reply to Defendant Calder Door & Speciality Company's Opposition to Defendants, Schweiss Distributing, Inc. and Schweiss Bi-fold Doors, Inc.'s Motion for Summary Judgment was served upon all counsel and/or parties by first class mail, postage prepaid:

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